IN

THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH JAIPUR

J U D G M E N T

Ram Prasad Versus Ram Kishan

S.B. Civil First Appeal
No.89/1987 against the judgment
and decree dated 6.3.1987 passed
by Shri Prabhu Dayal Sharma
Additional District Judge,
Gangapur City in Civil Suit No.
63/83.

Date of Judgment ::: September 4**, 2006**

PRESENT

HON'BLE MR. JUSTICE KHEM CHAND SHARMA

Mr. R.S. Agarawal for the appellant
Mr. D.K. Dixitfor the respondent

BY THE COURT:

This appeal under Section 96 CPC arises out of the judgment and decree dated 6.3.1987 passed by the learned Additional District Judge, Gangapur City, whereby the learned Judge has dismissed the plaintiff's suit for recovery of Rs. 11906/-.

Plaintiff Ram Prasad filed a civil suit against defendant Ram Kishan for recovery of a sum of Rs. 11,906/- with the allegation that on `Chaitra-wadi 9

Smvt. 2035 the defendant entered in an oral contract with the plaintiff to purchase 120 bags of `Dhani' at the rate of Rs. 104 per quintal, in the presence of Om Prakash and Kanhaiyalal of village Bamanwas and took delivery of the goods on `Chetra Vadi' 14 Smvt. 2035 after getting it weighed from Nawal Kishore Tulara and agreed to pay Rs. 8736/- as cost of the goods and Rs. 20/- as temple donation, with interest at the rate prevailant in the market. The defendant agreed to pay the aforesaid sum on `Jeth Sudi 15 Smvt. 2035. But the defendant failed to pay the amount and continued to avoid payment. On inquiry, the plaintiff came to know that neither the defendant got prepared `bilty' in his name nor in the name of his so-called Firm Bhagwan Sahay Ramavatar. In fact, no such firm was in existence at the time of contract. Ultimately, the plaintiff sent a registered notice dated 27.6.79 to the defendant and then filed the suit.

It appears from the averments of the plaint that no document in respect of above contract was executed between the parties. It was merely an oral transaction. The defendant in his written statement has categorically denied the averments of the plaint. The

defendant categorically stated that he never purchased 120 bags of Dhani from the plaintiff at any point of time. The plaintiff has tried to prove its case by adducing oral evidence.

The trial court, at the conclusion of trial and on consideration of evidence, came to the conclusion that plaintiff, on the basis of ocular evidence, has not been able to prove the so-called transaction and accordingly dismissed the suit.

I have gone through the impugned judgment and the evidence on record. The plaintiff in his statement has stated that the defendant had agreed to purchase 120 bags of `Dhani' in the presence of PW2 Kanhaiyalal and PW3 Om Prakash and that Dhani was got weighed through PW4 Nawal Kishore. He further stated that Kanhaiya Lal gave him Rs. 1/- as an advance on behalf of defedant. PW 2 Kanhaiyalal has stated that defendant Ram Kishan had paid Rs. 1/- as an advance to plaintiff Ram Prasad. PW3 Om Prakash in his cross examination has stated that Ram Kishan had paid Rs. 1 as an advance to plaintiff Ram Prasad. According to the plaintiff, it was PW2 Kanhaiyalal who gave Rs. 1/- as an advance on behalf of defendant Ram Kishan, while Kanhaiyalal and Om Prakash

both have stated that it was defendant himself who gave the advance of Rs. 1/-. To prove the oral transaction and to find out the truth of such transaction, the evidence adduced must be so specific and in categorical terms so as to enable the court to place implicit reliance. In the instant case, the plaintiff and his witnesses, as stated above, have contradicted with each other on this important aspect of the matter. That apart, the plaintiff in his plaint has not stated a single word about this material aspect as to the amount of Rs. 1 having been paid as an advance. Even if it is taken to be true that Rs. 1 was paid as an advance against the transaction, the plaintiff should have claimed the amount after deducting Rs.1 paid to him as an advance. However, neither the plaintiff has done so nor has offered any explanation as to why he did not deduct Rs. 1 while filing suit for recovery of the amount.

Plaintiff has stated that there was a gap of 4-5 days between the transaction and the day on which `Dhani' was weighed. On the contrary, PW4 Nawal Kishore who got the `Dhani' weighed has stated in his cross examination that he does not remember as to on which

date the `Dhani' was weighed. The rate was agreed at Rs. 104 per quintal and in all 84 quintal `Dhani' was weighed. He has categorical denied the transaction having taken place in his presence. He has also denied that the rate was settled in his presence. It was plaintiff Ram Prasad who had informed him that the transaction was finalized a day earlier @ Rs. 104/- per quintal. Evidently, thus there is material contradiction in the statement of plaintiff and his witness Nawal Kishore.

In para No. 1 of the plaint it has been averred that payment of sale consideration has to be made on `Jeth Sudi 15 Smvt. 2036. However, the plaintiff in his statement has stated that defendant told him that he will make payment within 6-7 days. Payment of sale consideration is a material fact in relation to such contracts and the plaintiff himself has contradicted on this material issue. Futher PW2 Kanhaiyalal has specifically stated that nothing transpired except the cost/price of the goods. Likewise, PW3 Om Prakash has also stated that nothing transpired at the time of transaction. That apart, the plaintiff does not remember as to what was the number of truck in which

goods were loaded and who was the driver of the truck. He does not remember even the name of owner of the truck.

Thus from the evidence discussed above, keeping in view the contradictions in the statements of plaintiff and his witnesses, it cannot be said that any such transaction had taken place. It may also be noticed that plaintiff, in addition to the suit for recovery, had also initiated criminal proceedings against the defendant but he does not remember as to which proceeding were in earlier point of time. It may further be noticed that plaintiff does not remember as to in which truck and in whose presence the goods were loaded.

The trial court has minutely scrutinized the statements of plaintiff and his witnesses and, in my view, has rightly disbelieved their evidence as being not worthy of credence.

For the reasons aforesaid, the judgment impugned in this appeal being based on proper appreciation of evidence does not call for any interference.

Consequently, the appeal fails and is hereby dismissed with no order as to costs.

(Khem Chand Sharma), J.

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